

THE HIGH COURT OF TRIPURA
AGARTALA

MAC APP. NO.69 OF 2010

Shri Harekrishna Debnath,
S/O. Sri Motilal Debnath,
Resident of Vill. Ghilatali,
P.S.-Kalyanpur, Khowai Sub-Division,
District-West Tripura.

..... Appellant.

- V e r s u s -

1. Sri Jyotilal Laskar,
S/O. Late Satish Chandra Laskar,
Resident of Vill.-Baishnav Tilla, Amtali,
P.O. + P.S.-Amtali,
District-West Tripura.
2. The Oriental Insurance Co. Ltd.,
To be represented by its Divisional Manager,
Agartala, Divisional Office, Central Road,
Kaman Chowmuhani, P.O. Agartala,
P.S.-East Agartala,
District-West Tripura.

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. A. De, Advocate.
For the respondent No.2	: Mr. P. Gautam, Advocate.
Date of hearing and delivery of judgment and order.	: 20.02.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation is directed against the award dated 18-02-2010 delivered by the learned Motor Accident Claims Tribunal, Court No.4, West Tripura, Agartala in case No. T.S.(MAC) 123 of 2007 whereby he awarded

compensation of Rs.3,12,064/- to the claimant under the following heads:-

Pain and suffering	:- Rs. 10,000/-
Loss of income	:- Rs. 36,000/-
Medical expenses	:- Rs. 6,864/-
<u>Loss of future income</u>	<u>:- Rs.2,59,200/-</u>
Total	:- Rs.3,12,064/-

2. The undisputed facts are that the claimant suffered serious injuries in a motor vehicle accident involving Tata Sumo Jeep No.TR-01-A-4181 owned by Sri Jyotilal Laskar and insured with the Oriental Insurance Company Limited. The claimant filed a claim petition claiming compensation of Rs.5,00,000/- and the learned Tribunal after trial has awarded the compensation as aforesaid.

3. It is urged that the learned Tribunal has not taken into consideration various factors while assessing the compensation, especially the treatment taken outside the State. Reference has been made to certain documents which were filed and which documents are on the record of the trial Court file but no reference of them has been made in the judgment.

4. It is well settled law that in a case of injuries compensation is awarded under two heads; pecuniary damages and non-pecuniary damages. Under the head of pecuniary damages, the expenses of treatment, attendants, special diet, transportation, hospitalization will be covered. Under the head of pecuniary losses, the claimant will also be entitled to the amount of

income which he has actually lost due to his being unable to attend his work and in case, the injury has caused a permanent disability, then the future loss of income shall also have to be considered. Under the head of non-pecuniary damages, normally damages will be awarded under the head of pain and suffering and in cases of permanent disability also for loss of amenities of life and future discomfort in life. In cases where the claimant is a young unmarried person and the injuries affect his marital prospects, damages for loss of marital prospects can also be awarded.

5. In the present case, there is no dispute with regard to the age of the claimant victim which was about 21 years and few months and, therefore, he is in the age range of 22 to 25 years. As far as income is concerned, according to the claimant his income was Rs.5,000/- per month and he used to work as a goldsmith and that he along with one Biswajit Debnath(PW-2) was running a jewellery shop, ornament making business, under the name and style of "Radhakrishna Jewellers" at Shantipara, Agartala. He claimed that he was earning Rs.5,000/- per month but had not produced any documentary evidence with regard to the income. The learned Tribunal has treated the claimant to be a daily waged labourer and has accepted his income as Rs.100/- per day. Even the respondents have not disputed the fact that the claimant is not a daily waged worker but a goldsmith. A goldsmith is an artisan and his wages would be definitely more than that of a daily waged worker and keeping into consideration the young age and the

future prospects of the claimant, I assess the income at Rs.4,500/- per month.

6. Now coming to the question as to assessment of damages. The evidence on record shows that the claimant immediately after the accident was taken to the G.B.P. Hospital, Agartala where he remained admitted from 09-12-2006 to 08-01-2007, i.e. for a period of 31 days. He was diagnosed as suffering from post dislocation of the left hip with fracture of the hip joint. It is apparent that even after the petitioner was discharged from hospital, he was advised to undergo Hip Mobilisation exercises as is apparent from the reverse of the discharge certificate. There is also material on record to show that the petitioner was treated both in Agartala and at Silchar by private doctors in relation to the injuries suffered by him. One Dr. Tapan Kr. Das has also advised replacement of the hip joint. The disability of the petitioner has been assessed at 40%.

7. It is urged on behalf of the petitioner that, in fact, the petitioner has undergone hip replacement surgery and this was got done at Apollo Hospital in Chennai. However, no material has been placed on record of this appeal to prove this fact and even though the appeal has been pending for the last 5(five) years, no application for additional evidence has been filed. I am also of the view that if the petitioner is compensated for the cost of undergoing a hip replacement surgery, then he may also have to get a fresh disability certificate and after hip replacement his disability may be zero. Learned counsel for the petitioner states

that instead of entering into this controversy, the matter may be decided on the basis of the evidence on record.

8. As far as pecuniary damages are concerned, the cost of medicines which has been proved on record is about Rs.5,000/-. However, this Court cannot lose sight of the fact that the treatment was long drawn out and for more than two years the claimant has gone to private doctors also. He has visited doctors at Silchar as well as at Agartala and keeping in view the nature of the injuries and the prolonged treatment, I assess the expenses on medicines and doctors alone at **Rs.20,000/-**.

9. The claimant remained in hospital for 31 days. He would have been attended upon in the hospital by at least two attendants round the clock. The cost of one attendant in the year 2007 would be not less than Rs.250/- per day and, therefore, the cost of two attendants works out to Rs.500/- per day and on account of cost of attendants, the damages are assessed at **Rs.15,500/-**.

10. The claimant has also been to Silchar for treatment. He has gone by bus. He must have taken some attendant along with him and spent some money for boarding and lodging at Silchar. Therefore, he is awarded **Rs.10,000/-** for his treatment at Silchar.

11. Now coming the question of the loss of income. The learned Tribunal has assessed the loss of income for one year. I am afraid this is not correct. Though the claimant has been going for treatment regularly, that does not mean that he was totally unfit to do work during this period of one year. In my opinion,

keeping in view all factors, he should not be awarded more than six months loss of income which works out to **Rs.27,000/-**.

12. As far as future loss of income is concerned, the claimant is a goldsmith. He is not a manual labourer. He has suffered an injury to the hip. Unfortunately, no doctor was examined to prove what is the affect of the injury. At the same time, in the evidence produced on record it is stated that the claimant shall find it difficult to sit or squat. Therefore, he will face this difficulty. How much this will affect his earning capacity should have been proved by the claimant by leading cogent evidence. This was not done. The 40% disability cannot be translated to 40% loss in earning capacity.

13. This Court has repeatedly held that loss of disability is not necessarily equal to loss of earning capacity. A loss of disability of a leg to the extent of 30% to 40% in the case of a labourer may cause loss of earning capacity to 70% to 80% or even more. However, if the person is working in a desk job like in Government service, there may not be any loss of income. What is the loss of income in the case of a goldsmith has to be determined on the basis of evidence. Unfortunately, other than the statement of the claimant and his partner, there is no medical evidence to show what are the activities which the claimant can perform and what he cannot perform.

14. Normally, a goldsmith who is an artisan will work sitting down to forge the ornaments. This work can also be done standing by making some adjustments. Nevertheless, there will be

some loss in the earning capacity. Due to lack of any cogent evidence, I assess the loss in the earning capacity at 25% of Rs.4,500/- which works out to Rs.1,125/- per month or Rs.13,500/- per year. Multiplier of 18 is applied and the compensation under this head works out to **Rs.2,43,000/-**.

15. Next comes the question as to pain and suffering. The award of Rs.10,000/- is extremely miserly, to say the least. The claimant remained in hospital for one month. He for almost two years has been suffering pain and going to private doctors. Even during the period of trial, he had not fully recovered and the pain was continuing as is evident from the evidence which has been led on record. Therefore, he is awarded **Rs.35,000/-** under the head of pain and suffering.

16. The learned Tribunal has not awarded any amount to the claimant for loss of amenities of life and future discomfort in life. The claimant was a young man aged 21 years. He for the rest of his life is permanently disabled. He is suffering from a disability whereby he cannot walk like a normal human being. He cannot play games like his friends and colleagues can. The claimant cannot sit or squat comfortably. He will have to spend most of his life standing instead of sitting or squatting like a normal human being. He has to live the rest of his life like a disabled person. Such disability will not only affect the earning capacity but also affect the social life of a victim and this also has to be compensated under the head of future discomfort and loss of amenities of life.

Therefore, he is awarded **Rs.1,00,000/-** for loss of amenities of life and future discomfort in life.

17. The claimant was a young man aged 21 years. His marital prospects have definitely been hampered and, therefore, he is awarded **Rs.25,000/-** under this head also.

Therefore, the total compensation works out to Rs.(20,000 + 15,500 + 10,000 + 27,000 + 2,43,000 + 35,000 + 1,00,000 + 25,000) = Rs.4,75,500/- (rupees four lakh seventy five thousand five hundred).

18. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.3,12,064/- to Rs.4,75,500/-, i.e. by Rs.1,63,436/-. On the amount of compensation so awarded, the claimant shall also be entitled to interest @ 7.5% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. Since the Insurance Company has already satisfied the award of the Tribunal, it is directed to deposit the enhanced amount of compensation along with interest in the Registry of this Court within 8(eight) weeks from today after deducting/adjusting the amount, if any, already paid/deposited by them along with proof of such earlier deposit.

19. The appeal is disposed of in the aforesaid terms.

20. Send down the lower court records forthwith.

CHIEF JUSTICE